

RECEIVED

APR 16 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of Part 1 of the
Commission's Rules --
Competitive Bidding Proceeding

)
)
)
)
)

WT Docket No. 97-82

To: The Commission

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

Robert S. Foosaner
Senior Vice President -
Government Affairs

Lawrence R. Krevor
Director - Government Affairs

Laura L. Holloway
General Attorney

Nextel Communications, Inc.
800 Connecticut Avenue, N.W.
Suite 1001
Washington, D.C. 20006
202-296-8111

Dated: April 16, 1997

No. of Copies rec'd
List #0005

024

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Part 1 of the)	
Commission's Rules --)	WT Docket No. 97-82
Competitive Bidding Proceeding)	

To: The Commission

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to Section 1.415 of the Rules of the Federal Communications Commission ("Commission"), Nextel Communications, Inc. ("Nextel") respectfully submits these Reply Comments on the Commission's Notice Of Proposed Rule Making ("NPRM") in the above-captioned proceeding.^{1/}

In the NPRM, the Commission proposed to streamline its general auction rules based on its experiences in completed auctions and feedback from auction participants.^{2/} Nextel filed Comments on March 27, 1997 opposing the proposed real-time bidding methodology, the minimum opening bid, the maximum bid increment, the award of returned licenses to the second-highest bidder and the proposed exception to the anti-collusion rules that would permit investors to move their investment from one bidder to another when the first bidder drops out of the auction. Nextel also opposed the

^{1/} Order, Memorandum Opinion and Order and Notice Of Proposed Rule Making, WT Docket No. 97-82, released February 28, 1997.

^{2/} *Id.* at para. 1.

imposition of these rules on any auction for which rules have been established, e.g., the auction of the upper 200 800 MHz Specialized Mobile Radio ("SMR") channels.^{3/}

II. DISCUSSION

A. Amended Auction Rules Should Be Applied Prospectively

Other commenters opposed the imposition of the Commission's proposed general rules on those auctions for which rules have already been established.^{4/} While developing general rules to be applied in all auctions provides consistency and streamlining of the auction process, the Commission should not impose them on auctions for which rules have been established. Potential bidders have reviewed the established rules and begun to prepare auction strategies based upon them. Wholesale changes to established auction rules, like those proposed in the NPRM, could at this late date potentially slow the start of the auction and create confusion among potential bidders who have familiarized themselves with existing rules. However, some of the proposals in the NPRM could benefit potential bidders in the established auction proceedings by providing them certainty and clarity about particular rules. For example, as discussed in the following section, the anti-collusion rules currently are unclear and should be amended to the extent discussed herein.

^{3/} First Report and Order, Eighth Report and Order, Second Further Notice Of Proposed Rule Making, 11 FCC Rcd 1463 (1995).

^{4/} See Comments of Airtouch Paging and Powerpage, Inc. ("Airtouch Paging") at 2; and Comments of the Personal Communications Industry Association ("PCIA") at p. 2.

B. Nextel Supports The Creation of a "Safe Harbor" To The Anti-Collusion Rules That Would Permit Ongoing Business Discussions Among Bidders

Like AT&T Wireless and Airtouch Paging, Nextel supports the creation of a safe harbor rule that would allow bidders to begin or continue certain types of business negotiations with other bidders during the auction. Spectrum auction participants are, in most cases, ongoing business concerns which may be engaged in a plethora of discussion with other similarly-situated entities, some of which may also be bidding entities. As AT&T Wireless noted in its comments, there are many types of ongoing business discussions that "do not involve the sort of bid rigging and other anti-competitive behavior about which the Commission should be concerned."^{5/} Among these types of discussions are those involving acquisitions, particularly in those services with significant numbers of incumbent operators engaged in mergers and consolidation, e.g., paging and SMR. Once these discussions have started, they should not be foreclosed simply because an auction has begun.

In fact, in the 800 MHz SMR service, the Commission encouraged these very types of negotiations among incumbent operators to assist them in establishing contiguous blocks of spectrum. In the First Report and Order, Eighth Report and Order, and Second Further Notice Of Proposed Rule Making,^{6/} the Commission proposed voluntary, private negotiations among 800 MHz licensees in an effort to clear the upper 10 MHz block of 800 MHz SMR spectrum for

^{5/} Comments of AT&T Wireless at p. 7.

^{6/} 11 FCC Rcd 1463 (1995).

auction.^{7/} These and other types of negotiations, many of which are already underway, should not be jeopardized or stopped simply because the auction has started. As long as the bidders/negotiators certify that "they are not sharing information with other auction participants in violation of the anti-collusion rules,"^{8/} the discussions do not have an anti-competitive effect on the auction, and they do not result in "bid rigging" or other collusive activities.

A safe harbor assures auction participants that their business negotiations are not in violation of the Commission's anti-collusion rules and can be continued throughout the auction. Thus, although Nextel is generally opposed to the application of these new auction rules to services for which rules are already established, Nextel supports application of the safe harbor to the 800 MHz SMR, among others. It would provide much-needed clarification of the anti-collusion rules, and it would allow parties to continue their on-going businesses without unnecessary interruption. These benefits far outweigh any potential confusion or complexity that might be created for potential 800 MHz SMR bidders who have been relying upon the established auction rules.

^{7/} *Id.* at paras. 75-76.

^{8/} Comments of Airtouch Paging at p. 12.

C. Nextel Reiterates Its Opposition To Real Time Bidding, Minimum Opening Bids, The Offering Of Defaulted or Disqualified Licenses to the Second-Highest Bidder, And The Proposed Exception To The Anti-Collusion Rules

1. Real Time Bidding

As AT&T Wireless noted in its comments, the Commission's proposed "real time" bidding may speed up the process, but its other impacts are unknown since it has never been tested.^{2/} Because the proposal is untested, and more importantly, because it is likely to create unwarranted complexities and confusion for bidders and would make it impossible to craft informed bidding strategies during the auction, the Commission should not adopt this proposal. As Nextel pointed out in its Comments, the Commission is attempting to apply to a simultaneous auction of hundreds of licenses rules that can only function in an auction of one item at a time.

Nextel reiterates herein that real time bidding would require bidders to constantly monitor the bidding activities on every license in which it is interested in every round. Bidders attempting to build a nationwide system would have to simultaneously monitor the activity on hundreds of licenses at the same time and be prepared to react instantaneously to bidding changes on any and all of them. Bidders would be forced to make critical -- and potentially very expensive -- decisions on the spur of the moment.

^{2/} Comments of AT&T Wireless at p. 5.

Rather than imposing real time bidding, the Commission should consider other methods for speeding the process. For example, as Nextel proposed in its Comments herein, the Commission could allow only one bid per round and thereby encourage legitimate bids rather than the gamesmanship created by placing, withdrawing and potentially re-placing a bid on a single license in a single round. The loss of activity units upon withdrawing that bid, moreover, would encourage bidders to consider their bids more carefully and place them on those licenses they truly seek to acquire. By "penalizing" withdrawals, i.e., loss of activity units and the inability to place another bid on that same license in the same round, "signalling" to other bidders would not be as easy or as likely under this proposal.

2. Minimum Opening Bids

Other commenters agreed with Nextel's position that minimum opening bids are completely at odds with the very essence of the Commission's auction process and should not be imposed in any future auction.^{10/} The auction process is intended to award spectrum licenses at a price determined by the marketplace based on what bidders are willing to pay for them. By establishing a minimum opening bid, the Commission is dictating to the market the worth of a particular license. This flies in the face of the Commission's auction processes and should not be included in the auction rules.

^{10/} Comments of Airtouch Paging at p. 10; Comments of American Mobile Telecommunications Association ("AMTA") at 15.

3. Re-Auction of Defaulted or Disqualified Licenses

Nextel generally supports the re-auction of any license returned to the Commission after an auction -- whether due to default, failure to make down payments or disqualification. As stated by AT&T Wireless in its Comments, a separate auction would not be costly or time-consuming, given the Commission's computerized auction system and auction resources and experience,^{11/} and the reauction would ensure that the license is awarded to the party who values it the most.^{12/}

By re-auctioning the license, the Commission also ensures that the price paid is the current market price rather than the price that was applicable at the time of the first auction. Moreover, as AT&T Wireless and Nextel each pointed out in their comments, re-auctioning -- unlike awarding the license to the second-highest bidder -- would not encourage litigation by providing an incentive for the other bidders to file petitions to deny against the winner in hopes of having the license offered to them should their petitions be granted. However, Nextel does not oppose the Commission's discretion to award the license to the second-highest bidder when the default occurs soon after the close of the auction and there has been no opportunity to file petitions to deny. In such instances, there would be little or no risk of significant changes in the market price and no risk of encouraging unnecessary petitions to deny.

^{11/} Comments of AT&T Wireless at p. 6.

^{12/} *Id.*

4. Exceptions to the Anti-Collusion Rules

Nextel continues to oppose the Commission's proposal to permit "movement" of an investor's capital from one bidder to another after the investor's original bidding entity has dropped out of the auction. Nextel does not disagree that this arguably could provide new sources of capital for bidding entities. The potential benefit of this "recycled" capital is vastly outweighed, however, by the enormous potential it creates for the very collusive activities the Commission seeks to prevent.

D. Nextel Requests That The Commission Establish A Minimum "Between-Rounds" Time Period For All Auctions

Nextel reiterates herein its position that the time period between rounds should not be compromised. At the end of each round, bidders must carefully review the previous round's bids and develop their strategy for the next round, a process that is essential to every bidders' overall strategy development and their ability to obtain the licenses they value most highly. Therefore, Nextel proposes that the Commission adopt a minimum time period below which the time between rounds can never fall. The Commission should establish a one-hour minimum on the amount of time it provides between rounds, thus ensuring that bidders are always given sufficient time to develop critical bidding strategies.

III. CONCLUSION

Nextel supports the Commission's attempt to streamline its auction rules to provide for more effective and efficient auctions. However, these rules should not apply to those auctions for which there are auction rules in place. Moreover, the Commission should

not adopt real time bidding, and it should amend its proposed rules as discussed herein.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

By, 

Robert S. Foosaner
Senior Vice President -
Government Affairs

Lawrence R. Krevor
Director - Government Affairs

Laura L. Holloway
General Attorney

Nextel Communications, Inc.
800 Connecticut Avenue, N.W.
Suite 1001
Washington, D.C. 20006
202-296-8111

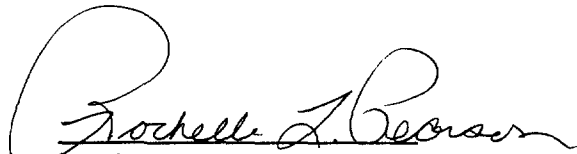
Dated: April 16, 1997

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 16th day of April 1997, caused a copy of the attached Reply Comments of Nextel Communications, Inc. to be served by hand delivery or first-class mail, postage prepaid to the following:

Mark Bollinger
Staff Attorney
Federal Communications Commission
Room 5328
2025 M Street, NW
Washington, DC 20554

Alan Shark
Jill Lyon
American Mobile Telecommunications
Association, Inc.
Suite 250
1150 18th Street, NW
Washington, DC 20036



Rochelle L. Pearson